

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kenneth Shelton	Team: Squad #2	CCRB Case #: 201903090	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 04/05/2019 10:43 PM	Location of Incident: [REDACTED]	Precinct: 110	18 Mo. SOL 10/5/2020	EO SOL 5/22/2021	
Date/Time CV Reported Wed, 04/10/2019 10:29 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/10/2019 10:29 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Justin Fragoletti	26018	963998	110 PCT
2. POM Enmanuel Disla	24886	962366	110 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Chris Logan	04438	944740	110 PCT
2. POM Seungji Huh	09627	937874	110 PCT
3. POM Nicholas Gismondi	11997	960592	110 PCT
4. POM Mark Ortiz	17662	964196	110 PCT
5. POM Jose Checo	19715	962312	110 PCT
6. POM Patrick Oshea	17115	964198	110 PCT
7. POM Joseph Antonucci	21575	959458	110 PCT
8. POM Michael Nardo	06826	963177	110 PCT
9. POM Brandon Morales	06096	964664	110 PCT
10. POM Alexandru Trefas	04141	964810	110 PCT
11. POM David Calhoun	30063	963427	110 PCT
12. POM James Cronin	05894	963471	110 PCT
13. POM Matthew Caulfield	02134	956507	110 PCT
14. POM William Graham	22859	953926	110 PCT
15. POM Ryan Valdez	07150	966376	110 PCT
16. POM Kevin Williams	24557	953571	110 PCT
17. DTS Brian Timmons	01717	907446	110 PCT
18. SGT Brian Chow	01228	938227	110 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Justin Fragoletti	Abuse: Police Officer Justin Fragoletti stopped § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Enmanuel Disla	Abuse: Police Officer Enmanuel Disla stopped § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Enmanuel Disla	Discourtesy: Police Officer Justin Fragoletti spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
D.POM Justin Fragoletti	Force: Police Officer Justin Fragoletti used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
E.POM Enmanuel Disla	Force: Police Officer Enmanuel Disla used physical force against § 87(2)(b)	
F.POM Enmanuel Disla	Force: Police Officer Enmanuel Disla used a chokehold against § 87(2)(b)	
G.POM Enmanuel Disla	Force: Police Officer Enmanuel Disla restricted § 87(2)(b)'s breathing.	

Case Summary

On April 10, 2019, § 87(2)(b) filed this complaint on the behalf of § 87(2)(b) over the phone, with the CCRB.

On April 5, 2019, at approximately 11:00 p.m., § 87(2)(b) was standing at the intersection of § 87(2)(b) in Queens and observed Police Officer Justin Fragoletti and Police Officer Emmanuel Disla, both of the 110th Precinct, exit their police vehicle and stop § 87(2)(b) (**Allegation A and B: Abuse of Authority - Stop**, § 87(2)(g)). During a conversation with § 87(2)(b) Police Officer Disla stated “I’m gonna put you on the ground if you don’t fucking calm down” (**Allegation C: Discourtesy – Word**, § 87(2)(g)). After the conversation, Police Officer Fragoletti and Police Officer Disla used force to bring § 87(2)(b) to the ground (**Allegation D and E: Force – Physical Force**, § 87(2)(g)). At this point § 87(2)(b) crossed the street to get closer, and began filming the incident. § 87(2)(b) alleged that during this physical interaction, Police Officer Emmanuel Disla used a chokehold against § 87(2)(b) and restricted his breathing (**Allegation F: Force – Chokehold**, § 87(2)(g)) (**Allegation G: Force – Restricted Breathing**, § 87(2)(g)).

Additional officers arrived and helped place § 87(2)(b) into handcuffs. Once § 87(2)(b) was placed in a police vehicle, officers began leaving the location. § 87(2)(b) was arrested and charged with Resisting Arrest, Obstructing Governmental Administration in the 2nd degree, Disorderly Conduct (creating a hazardous condition), and Harassment in the 2nd degree (**BR 23**).

Body-worn camera (BWC) footage from Police Officer Disla, Police Officer Fragoletti, Police Officer Ortiz, Police Officer Gismondi, Police Officer Cronin, Police Officer Caulfield, Police Officer Graham, Police Officer Valdez, Police Officer Williams, Police Officer Checo, Police Officer Oshea, Police Officer Calhoun, depicting the incident was received. The footage is in IAs #53-70 (**BR 02 - 19**) and summarized in IA #100 (**BR 20**). § 87(2)(b) Costa provided a video that he shot on his cell phone during the incident, which is in IA #12 (**BR 25**). Video evidence was also obtained from § 87(2)(b) and § 87(2)(b), stores located near the incident location (**BR 28 – 29**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Justin Fragoletti stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Emmanuel Disla stopped § 87(2)(b)

On April 10, 2019, § 87(2)(b) provided telephone statements to the CCRB (**BR 31**). On April 11, 2019, § 87(2)(b) was interviewed at the CCRB (**BR 32**). The investigation was unable to obtain a statement from § 87(2)(b). On March 4, 2020, Police Officer Justin Fragoletti (**BR 33**) and Police Officer Emmanuel Disla were interviewed at the CCRB (**BR 34**).

It is undisputed that Police Officer Justin Fragoletti and Police Officer Emmanuel Disla stopped § 87(2)(b).

Police Officer Fragoletti stated that he and Police Officer Disla were stationed in their marked vehicle on the southeast corner of § 87(2)(b) in Queens. While seated in the vehicle, § 87(2)(b) approached the officers’ vehicle, spat at the vehicle, cursed at the officers, said, “Go fuck yourselves,” and “gave” the officers “the middle finger.” Police Officer Disla and Police Officer Fragoletti asked § 87(2)(b) what was wrong, and § 87(2)(b) replied, “Fuck you.” Police Officer Disla and Police Officer Fragoletti exited their vehicle to initiate a stop. Police Officer Fragoletti stated that they initiated a stop because § 87(2)(b) committing disorderly conduct by spitting, cursing, and causing a crowd of three to five people to gather.

§ 87(2)(g)
Police Officer Disla estimated the size of the crowd that gathered at this point in the incident to be approximately two to three people. Police Officer Disla’s intention was to issue § 87(2)(b) a summons for disorderly conduct.

The first surveillance video provided from § 87(2)(b) attached to IA # 15 and titled ch04_20190405222032.avi (BR 29), beginning at 8 minutes and 37 seconds into the video, shows § 87(2)(b) walking away from the officers' police vehicle, walking from the middle of the street onto the sidewalk. Police Officer Disla and Police Officer Fragoletti follow § 87(2)(b) and one of the officers grabs § 87(2)(b)'s backpack to have him stop. Due to the angle of the camera, it does not show what interaction occurred between § 87(2)(b) and the officers prior to the stop and any such alleged interaction and possible formation of a crowd would have occurred off-camera. The Officers' BWC footage begins as the officers stop § 87(2)(b) and does not show his alleged behavior or possible formation of a crowd prior to the stop.

Patrol Guide Procedure 212-11 (BR 21) defines a "Terry Stop" (Level 3 encounter) as "any encounter between a civilian and a uniformed member of the service in which a reasonable person would not feel free to disregard the officer and walk away... A stop may be conducted only when a police officer has an individualized reasonable suspicion that the person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor."

§ 87(2)(g)

Allegation (C) Discourtesy: Police Officer Enmanuel Disla spoke discourteously to § 87(2)(b).

It is undisputed that Police Officer Enmanuel Disla used the word "fucking" while speaking to § 87(2)(b). After the officers stopped § 87(2)(b) the officers asked § 87(2)(b) for identification while making physical contact with him. After a back and forth in which § 87(2)(b) refused to provide identification and physical resisted the officers, Police Officer Disla stated, "I'm gonna put you on the ground if you don't fucking calm down."

Police Officer Disla's body camera footage, at 1:10 in the recording, shows Police Officer Disla stating "I'm gonna put you on the ground if you don't fucking calm down" (BR 02).

Police Officer Disla stated that the voice making that statement was his voice. When asked why he used the word "fucking" in conversation with § 87(2)(b) Police Officer Disla stated that he did not direct that comment to § 87(2)(b) and that he was trying to get his point across.

NYPD Patrol Guide Procedure 200-02 (BR 22) states that the department values human life and respects the dignity of each individual, and that officers must render their services with courtesy and civility.

DAO-DCT Case number 2017-17005 (PD v. Singh) states that the tribunal has held that profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct (BR 30).

§ 87(2)(g)

It is undisputed that the officers had engaged physically with § 87(2)(b) at this point and that § 87(2)(b) was resisting the officers. § 87(2)(g)

Allegation (D) Force: Police Officer Justin Fragoletti used physical force against § 87(2)(b).

Allegation (E) Force: Police Officer Enmanuel Disla used physical force against § 87(2)(b).

It is undisputed that Police Officer Fragoletti and Police Officer Disla used physical force against § 87(2)(b).

§ 87(2)(b) stated that, upon approaching § 87(2)(b) the officers immediately grabbed § 87(2)(b) and held him against the grate of the cell phone store. § 87(2)(b) approached them and then started looking for his cell phone so he could record the incident. By the time he found his cell phone and looked up, § 87(2)(b) was face up on the ground and the officers were both on their knees holding him. § 87(2)(b) did not see how § 87(2)(b) came to be on the ground because he was searching for his phone. During the struggle on the ground, § 87(2)(b) observed Police Officer Disla and Police Officer Fragoletti punch § 87(2)(b) but he could not see where on his body they punched.

Police Officer Disla stated that § 87(2)(b) refused to provide identification and stated “I don’t have ID” multiple times. Police Officer Disla stated that § 87(2)(b) was in violation of disorderly conduct because of his spitting, cursing, and causing a crowd to gather. When asked if he considered two to three people to be a crowd, Police Officer Disla stated that he considered it to be the forming of a crowd. Police Officer Disla informed § 87(2)(b) that if he did not provide identification that he would be placed under arrest. § 87(2)(b) repeated that he did not have identification. Police Officer Disla told § 87(2)(b) that if he had identification that he would issue him a summons and not place him under arrest. § 87(2)(b) responded that he did not have identification.

Police Officer Disla and Police Officer Fragoletti then attempted to place § 87(2)(b) s hands behind his back to place him under arrest. § 87(2)(b) refused to place his arms behind his back by tensing his arms. Police Officer Disla did not recall which arm of § 87(2)(b) s he grabbed. Police Officer Disla and Police Officer Fragoletti then grabbed their respective arms and pulled § 87(2)(b) onto the ground with the front of his body making contact with the ground. Police Officer Disla and Police Officer Fragoletti told § 87(2)(b) multiple times to stop resisting arrest and Police Officer Disla radioed for an additional unit for crowd control, as a group of approximately 40 to 50 people gathered to observe and record the incident. § 87(2)(b) resisted being placed under arrest by flailing his arms and legs and tightening his arms. § 87(2)(b) continued to curse and told other nearby civilians to record the interaction. After approximately three to four minutes, § 87(2)(b) was placed under arrest. Police Officer Disla denied punching § 87(2)(b) or observing Police Officer Fragoletti do so.

Police Officer Fragoletti CCRB testimony was consistent with Police Officer Disla’s testimony. Police Officer Fragoletti denied punching § 87(2)(b) or observing Police Officer Disla do so.

Police Officer Chows’s TRI notes that § 87(2)(b) resisted and refused to place his hands behind his back (**BR 23**).

The video footage from Police Officer’s Disla’s BWC shows § 87(2)(b) refusing to provide his arms and hands to the officers as they make physical contact with him.

The video footage provided by § 87(2)(b) shows § 87(2)(b) flailing his arms and refusing to have his hands placed behind his back while on the ground.

Neither Police Officer Fragoletti nor Police Officer Disla’s BWC provide a clear angle that show the officers’ punching § 87(2)(b). While § 87(2)(b) video shows the officers making physical contact with § 87(2)(b) it does not show either officer punching § 87(2)(b).

NYPD Patrol Guide Procedure 221-01 (**BR 24**) states that reasonable force may be used to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy.

§ 87(2)(g)

Allegation (G) Force: Police Officer Enmanuel Disla restricted § 87(2)(b)s breathing.

§ 87(2)(b) stated that Police Officer Disla had his head pressed against the gate covering the closed cell phone store, and he was screaming at the officers that he could not breathe. Police Officer Disla had one of his hands wrapped around the § 87(2)(b)'s throat while Police Officer Fragoletti was holding the § 87(2)(b)'s body.

Police Officer Fragoletti denied witnessing Police Officer Disla commit the alleged misconduct.

The second surveillance video provided from § 87(2)(b), attached to IA # 15 and titled ch04_20190405223000.avi (BR 29), beginning at 1 minute and 14 seconds, shows one of the officers with his hand across the front of § 87(2)(b)'s upper body during the beginning stages of the forcible takedown and prior to § 87(2)(b) video recording, but without a statement from § 87(2)(b) the investigation was unable to determine if this was when the alleged chokehold occurred or whether his breathing was restricted. Furthermore, due to the angle and distance of the camera and the speed of the motion, it could not be determined based solely on the video whether the observed motioned was a chokehold or restricted § 87(2)(b)'s breathing.

[illegible][illegible]

- § 87(2)(b)
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- This is the first CCRB complaint involving § 87(2)(b) (BR 27).
- Police Officer Enmanuel Disla has been a member of service for three years and this is his first CCRB complaint.
- Police Officer Justin Fragoletti has been a member of service for three years and this is his first CCRB complaint.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b)'s court case resulting from his arrest in this incident, § 87(2)(b), remains open (**BR36**).
- § 87(2)(b)
- § 87(2)(b)
- A Notice of Claim inquiry was submitted to the New York City Office of the Comptroller on August 27, 2020. Its results will be added to the casefile upon receipt.

Squad No.: 2

Investigator:	<u>Inv. Kenneth Shelton</u>	<u>Inv. Kenneth Shelton</u>	<u>09/17/2020</u>
	Signature	Print Title & Name	Date

Squad Leader: <u>Alexander Opoku-Agyemang</u>	<u>IM Alexander Opoku-Agyemang</u>	<u>9/18/2020</u>
Signature	Print Title & Name	Date

Reviewer:

Signature

Print Title & Name

Date